

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1717
91ST GENERAL ASSEMBLY

Reported from the Committee on Rules, Joint Rules, Resolutions and Ethics, May 15, 2002, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

3932S.12C

AN ACT

To repeal sections 197.305, 197.310, 197.311, 197.315, 197.317, 197.326, 197.366 and 430.225, RSMo, relating to the certificate of need program of the department of health and senior services, and to enact in lieu thereof fifteen new sections relating to the same subject, with penalty provisions and an effective date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 197.305, 197.310, 197.311, 197.315, 197.317, 197.326, 197.366
2 and 430.225, RSMo, are repealed and fifteen new sections enacted in lieu thereof, to be
3 known as sections 197.305, 197.310, 197.315, 197.317, 197.326, 197.375, 197.378,
4 197.381, 197.384, 197.387, 197.390, 197.393, 197.396, 197.397 and 430.225, to read as
5 follows:

197.305. As used in sections 197.300 to [197.366] **197.367**, the following terms
2 mean:

3 (1) "Affected persons", the person proposing the development of a new
4 institutional health service, the public to be served, and health care facilities within the
5 service area in which the proposed new **institutional** health [care] service is to be
6 developed;

7 (2) "Agency", the certificate of need program of the Missouri department of health
8 **and senior services**;

9 (3) "Capital expenditure", an expenditure by or on behalf of a health care facility
10 which, under generally accepted accounting principles, is not properly chargeable as an

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

11 expense of operation and maintenance;

12 (4) "Certificate of need", a written certificate issued by the committee setting
13 forth the committee's affirmative finding that a proposed project sufficiently satisfies the
14 criteria prescribed for such projects by sections 197.300 to [197.366] **197.367**;

15 (5) "Develop", to undertake those activities which on their completion will result
16 in the offering of a new institutional health service or the incurring of a financial
17 obligation in relation to the offering of such a service;

18 (6) "Expenditure minimum" shall mean:

19 (a) For beds in existing or proposed health care facilities licensed pursuant to
20 chapter 198, RSMo, and long-term care beds in a hospital as described in subdivision (3)
21 of subsection 1 of section 198.012, RSMo, six hundred thousand dollars in the case of
22 capital expenditures, or four hundred thousand dollars in the case of major medical
23 equipment, provided, however, that prior to January 1, 2003, the expenditure minimum
24 for beds in such a facility and long-term care beds in a hospital described in section
25 198.012, RSMo, shall be zero, subject to the provisions of subsection 7 of section 197.318;

26 (b) For beds or equipment in a long-term care hospital meeting the requirements
27 described in 42 CFR, Section 412.23(e), the expenditure minimum shall be zero; and

28 (c) For health care facilities, new institutional health services or beds not
29 described in paragraph (a) or (b) of this subdivision one million dollars in the case of
30 capital expenditures, excluding major medical equipment, and one million dollars in the
31 case of medical equipment;

32 (7) "Health care facilities", [hospitals, health maintenance organizations,
33 tuberculosis hospitals, psychiatric hospitals] **long-term care beds in a hospital as**
34 **described in subdivision (3) of subsection 1 of section 198.012, RSMo, long-**
35 **term care hospitals or beds in a long-term care hospital meeting the**
36 **requirements described in 42 CFR Section 412.23(e)**, intermediate care facilities,
37 skilled nursing facilities, residential care facilities I and II, [kidney disease treatment
38 centers, including freestanding hemodialysis units, diagnostic imaging centers, radiation
39 therapy centers and ambulatory surgical facilities,] but excluding [the private offices of
40 physicians, dentists and other practitioners of the healing arts, and] Christian Science
41 sanatoriums, also known as Christian Science Nursing facilities listed and certified by
42 the Commission for Accreditation of Christian Science Nursing Organization/Facilities,
43 Inc., and facilities of not-for-profit corporations in existence on October 1, 1980, subject
44 either to the provisions and regulations of Section 302 of the Labor-Management
45 Relations Act, 29 U.S.C. 186 or the Labor-Management Reporting and Disclosure Act,
46 29 U.S.C. 401-538, and any residential care facility I or residential care facility II

47 operated by a religious organization qualified pursuant to Section 501(c)(3) of the federal
48 Internal Revenue Code, as amended, which does not require the expenditure of public
49 funds for purchase or operation, with a total licensed bed capacity of one hundred beds
50 or fewer;

51 (8) "Health service area", a geographic region appropriate for the effective
52 planning and development of **new institutional** health services, determined on the
53 basis of factors including population and the availability of resources, consisting of a
54 population of not less than five hundred thousand or more than three million;

55 (9) "Major medical equipment", medical equipment used for the provision of
56 medical and other health services;

57 (10) "New institutional health service":

58 (a) The development of a new health care facility costing in excess of the
59 applicable expenditure minimum;

60 (b) The acquisition, including acquisition by lease, of any health care facility[,
61 or major medical equipment costing in excess of the expenditure minimum];

62 (c) Any capital expenditure by or on behalf of a health care facility in excess of
63 the expenditure minimum;

64 (d) Predevelopment activities as defined in subdivision (13) hereof costing in
65 excess of one hundred fifty thousand dollars;

66 (e) Any change in licensed bed capacity of a health care facility which increases
67 the total number of beds by more than ten or more than ten percent of total bed capacity,
68 whichever is less, over a two-year period;

69 (f) Health services, excluding home health services, which are offered in a health
70 care facility and which were not offered on a regular basis in such health care facility
71 within the twelve-month period prior to the time such services would be offered;

72 (g) A reallocation by an existing health care facility of licensed beds among major
73 types of service or reallocation of licensed beds from one physical facility or site to
74 another by more than ten beds or more than ten percent of total licensed bed capacity,
75 whichever is less, over a two-year period;

76 **(h) A reallocation of hospital beds to long-term care beds in a hospital**
77 **as described in subdivision (3) of subsection 1 of section 198.012, RSMo, by**
78 **more than ten beds or ten percent of total licensed bed capacity of the**
79 **hospital, whichever is less, over a two-year period;**

80 (11) "Nonsubstantive projects", projects which do not involve the addition,
81 replacement, modernization or conversion of beds or the provision of a new
82 **institutional** health service but which include a capital expenditure which exceeds the

83 expenditure minimum and are due to an act of God or a normal consequence of
84 maintaining health care services, facility or equipment;

85 (12) "Person", any individual, trust, estate, partnership, corporation, including
86 associations and joint stock companies, state or political subdivision or instrumentality
87 thereof, including a municipal corporation;

88 (13) "Predevelopment activities", expenditures for architectural designs, plans,
89 working drawings and specifications, and any arrangement or commitment made for
90 financing; but excluding submission of an application for a certificate of need.

197.310. 1. The "Missouri Health Facilities Review Committee" is hereby
2 established. [The agency shall provide clerical and administrative support to the
3 committee. The committee may employ additional staff as it deems necessary.] **The**
4 **department of health shall hire and administratively supervise the clerical**
5 **and administrative support to the committee.**

6 2. The committee shall be composed of[:

7 (1) Two members of the senate appointed by the president pro tem, who shall be
8 from different political parties; and

9 (2) Two members of the house of representatives appointed by the speaker, who
10 shall be from different political parties; and

11 (3) Five] **seven** members appointed by the governor with the advice and consent
12 of the senate, not more than three of whom shall be from the same political party.

13 3. No business of this committee shall be performed without a majority of the full
14 body.

15 4. The members shall be appointed as soon as possible after September 28,
16 1979. One of the senate members, one of the house members and three of the members
17 appointed by the governor shall serve until January 1, 1981, and the remaining members
18 shall serve until January 1, 1982. All subsequent members shall be appointed in the
19 manner provided in subsection 2 of this section and shall serve terms of two years.

20 5. The committee shall elect a chairman at its first meeting which shall be called
21 by the governor. The committee shall meet upon the call of the chairman or the
22 governor.

23 6. The committee shall review and approve or disapprove all applications for a
24 certificate of need made under sections 197.300 to [197.366] **197.367**. It shall issue
25 reasonable rules and regulations governing the submission, review and disposition of
26 applications.

27 7. Members of the committee shall serve without compensation but shall be
28 reimbursed for necessary expenses incurred in the performance of their duties.

29 **8. No member of the Missouri health facilities review committee may**
30 **accept a political donation from any applicant who applies for a certificate**
31 **of need or review certification for a period of one year after the granting of**
32 **the certificate of need or review certification or six months prior to**
33 **requesting a certificate of need or review certification. If a member accepts**
34 **a donation six months prior to the request for a certificate of need or review**
35 **certification, it must be returned within ten business days of the filing**
36 **request made by the applicant.**

37 **[8.] 9.** Notwithstanding the provisions of subsection 4 of section 610.025, RSMo,
38 the proceedings and records of the facilities review committee shall be subject to the
39 provisions of chapter 610, RSMo.

 197.315. 1. Any person who proposes to develop or offer a new institutional
2 health service within the state must obtain a certificate of need from the committee prior
3 to the time such services are offered.

4 2. Only those new institutional health services which are found by the committee
5 to be needed shall be granted a certificate of need. Only those new institutional health
6 services which are granted certificates of need shall be offered or developed within the
7 state. No expenditures for new institutional health services in excess of the applicable
8 expenditure minimum shall be made by any person unless a certificate of need has been
9 granted.

10 3. After October 1, 1980, no state agency charged by statute to license or certify
11 health care facilities shall issue a license to or certify any such facility, or distinct part
12 of such facility, that is developed without obtaining a certificate of need.

13 4. If any person proposes to develop any new institutional health care service
14 without a certificate of need as required by sections 197.300 to **[197.366] 197.367**, the
15 committee shall notify the attorney general, and he shall apply for an injunction or other
16 appropriate legal action in any court of this state against that person.

17 5. After October 1, 1980, no agency of state government may appropriate or grant
18 funds to or make payment of any funds to any person or health care facility which has
19 not first obtained every certificate of need required pursuant to sections 197.300 to
20 **[197.366] 197.367**.

21 6. A certificate of need shall be issued only for the premises and persons named
22 in the application and is not transferable except by consent of the committee.

23 7. Project cost increases, due to changes in the project application as approved
24 or due to project change orders, exceeding the initial estimate by more than ten percent
25 shall not be incurred without consent of the committee.

26 8. Periodic reports to the committee shall be required of any applicant who has
27 been granted a certificate of need until the project has been completed. The committee
28 may order the forfeiture of the certificate of need upon failure of the applicant to file any
29 such report.

30 9. A certificate of need shall be subject to forfeiture for failure to incur a capital
31 expenditure on any approved project within six months after the date of the order. The
32 applicant may request an extension from the committee of not more than six additional
33 months based upon substantial expenditure made.

34 10. Each application for a certificate of need must be accompanied by an
35 application fee. The time of filing commences with the receipt of the application and the
36 application fee. The application fee is one thousand dollars, or one-tenth of one percent
37 of the total cost of the proposed project, whichever is greater. All application fees shall
38 be deposited in the state treasury. Because of the loss of federal funds, the general
39 assembly will appropriate funds to **the department of health and senior services**
40 **for expenditures related to the operation of** the Missouri health facilities review
41 committee.

42 11. In determining whether a certificate of need should be granted, no
43 consideration shall be given to the facilities or equipment of any other health care
44 facility located more than a fifteen-mile radius from the applying facility.

45 12. When a nursing facility shifts from a skilled to an intermediate level of
46 nursing care, it may return to the higher level of care if it meets the licensure
47 requirements, without obtaining a certificate of need.

48 13. In no event shall a certificate of need be denied because the applicant refuses
49 to provide abortion services or information.

50 14. A certificate of need shall not be required for the transfer of ownership of an
51 existing and operational health **care** facility in its entirety.

52 15. A certificate of need may be granted to a **health care** facility for an
53 expansion, an addition of services, a new institutional **health** service[, or for a new
54 hospital facility] which provides for something less than that which was sought in the
55 application.

56 16. The provisions of this section shall not apply to **health care** facilities
57 operated by the state, and appropriation of funds to such facilities by the general
58 assembly shall be deemed in compliance with this section, and such facilities shall be
59 deemed to have received an appropriate certificate of need without payment of any fee
60 or charge.

61 17. Notwithstanding other provisions of this section, a certificate of need may be

62 issued after July 1, 1983, for an intermediate care facility operated exclusively for the
63 mentally retarded.

64 18. [To assure the safe, appropriate, and cost-effective transfer of new medical
65 technology throughout the state, a certificate of need shall not be required for the
66 purchase and operation of research equipment that is to be used in a clinical trial that
67 has received written approval from a duly constituted institutional review board of an
68 accredited school of medicine or osteopathy located in Missouri to establish its safety and
69 efficacy and does not increase the bed complement of the institution in which the
70 equipment is to be located. After the clinical trial has been completed, a certificate of
71 need must be obtained for continued use in such facility] **In determining whether a
72 certificate of need should be granted, the health facilities review committee
73 shall consult with the director of the department of insurance, the attorney
74 general and the office of social and economic data analysis at the University
75 of Missouri to determine the current status of hospital system market
76 concentration in the state and the competitiveness of the hospital system
77 market in the region where the proposed project is located. The committee
78 shall use this information to determine whether any application under
79 consideration could result in further market consolidation that would be anti-
80 competitive in nature such that it would likely increase costs and thereby
81 decrease access for health care consumers as well as determine whether the
82 existing market consolidation and/or lack of competition in the area of the
83 proposed project has the impact of increasing costs such that the addition of
84 a new provider would likely reduce costs and thereby increase access for
85 health care consumers.**

197.317. 1. After July 1, 1983, no certificate of need shall be issued for the
2 following:

3 (1) Additional residential care facility I, residential care facility II, intermediate
4 care facility or skilled nursing facility beds above the number then licensed by this state;

5 (2) Beds in a licensed hospital to be reallocated on a temporary or permanent
6 basis to nursing care or beds in a long-term care hospital meeting the requirements
7 described in 42 CFR, Section 412.23(e), excepting those which are not subject to a
8 certificate of need pursuant to paragraphs (e) [and], (g) and (h) of subdivision (10) of
9 section 197.305; nor

10 (3) The reallocation of intermediate care facility or skilled nursing facility beds
11 of existing licensed beds by transfer or sale of licensed beds between a hospital licensed
12 pursuant to this chapter or a nursing care facility licensed pursuant to chapter 198,

13 RSMo; except for beds in counties in which there is no existing nursing care facility. No
14 certificate of need shall be issued for the reallocation of existing residential care facility
15 I or II, or intermediate care facilities operated exclusively for the mentally retarded to
16 intermediate care or skilled nursing facilities or beds. However, after January 1, [2003]
17 **2008**, nothing in this section shall prohibit the Missouri health facilities review
18 committee from issuing a certificate of need for additional beds in existing health care
19 facilities or for new beds in new health care facilities or for the reallocation of licensed
20 beds[, provided that no construction shall begin prior to January 1, 2004]. The
21 provisions of subsections 16 and 17 of section 197.315 shall apply to the provisions of
22 this section.

23 2. The health facilities review committee shall utilize demographic data from the
24 office of social and economic data analysis, or its successor organization, at the
25 University of Missouri as their source of information in considering applications for new
26 institutional long-term care facilities.

197.326. 1. Any [person] **individual** who is paid either as part of his normal
2 employment or as a lobbyist to support or oppose any project before the health facilities
3 review committee shall register as a lobbyist pursuant to chapter 105, RSMo, and shall
4 also register with the staff of the health facilities review committee for every project in
5 which such person has an interest and indicate whether such person supports or opposes
6 the named project. The registration shall also include the names and addresses of any
7 person, firm, corporation or association that the person registering represents in relation
8 to the named project. Any person violating the provisions of this subsection shall be
9 subject to the penalties specified in section 105.478, RSMo.

10 2. A member of the general assembly who also serves as a member of the health
11 facilities review committee is prohibited from soliciting or accepting campaign
12 contributions from any applicant or person speaking for an applicant or any opponent
13 to any application or persons speaking for any opponent while such application is
14 pending before the health facilities review committee.

15 3. Any [person regulated by chapter 197 or 198, RSMo,] **individual who**
16 **registers pursuant to subsection 1 of this section, any applicant**, and any officer,
17 attorney, agent and employee [thereof] **of such individual or applicant**, shall not
18 offer to any committee member or to any person employed as staff to the committee, any
19 office, appointment or position, or any present, gift, entertainment or gratuity of any
20 kind or any campaign contribution while such application is pending before the health
21 facilities review committee. Any person guilty of knowingly violating the provisions of
22 this section shall be punished as follows: For the first offense, such person is guilty of

23 a class B misdemeanor; and for the second and subsequent offenses, such person is guilty
24 of a class D felony.

**197.375. As used in sections 197.375 to 197.397, the following terms
2 mean:**

3 **(1) "Acute care facilities", hospitals, diagnostic imaging centers,**
4 **radiation therapy centers, ambulatory surgical facilities, short stay specialty**
5 **units, or facilities designed to house first-time services whether they are in**
6 **a specific fixed location or a mobile unit;**

7 **(2) "Affected person", the person proposing the development of a new**
8 **institutional acute care service, the public to be served, and acute care**
9 **facilities within the service area in which the proposed new institutional**
10 **acute care services is to be developed;**

11 **(3) "Anesthesia and sedation", the administration to an individual, for**
12 **any purpose, by any route, moderate or deep sedation as well as general,**
13 **spinal, or other major regional anesthesia. Anesthesia and sedation does not**
14 **include local anesthesia;**

15 **(4) "Committee", the Missouri health facilities review committee**
16 **established in section 197.310;**

17 **(5) "Commonly controlled", the acute care facility transferring the**
18 **licensed beds and the acute care facility receiving the beds as part of the**
19 **same control group of entities defined in Section 414(b) and (c) of the Internal**
20 **Revenue Code, as in effect from time to time; however, a not-for-profit entity**
21 **will be commonly controlled if the transferring acute care facility is the sole**
22 **corporate member of the acute care facility receiving the transfer, or the**
23 **acute care facility receiving the transfer is the sole corporate member of the**
24 **acute care facility transferring the beds, or both the transferring and**
25 **receiving acute care facilities having the same entity as their sole corporate**
26 **member, and in all cases, the sole corporate member shall retain sufficient**
27 **reserve powers to be able to significantly influence the actions and policies**
28 **of the acute care facilities;**

29 **(6) "Cost", an expenditure by or on behalf of an acute care facility**
30 **which, under generally accepted accounting principles, is not properly**
31 **chargeable as an expense of operation and maintenance, except for costs to**
32 **lease property, buildings, or equipment necessary to establish a first-time**
33 **service or a new institutional acute care service shall be included in the total**
34 **project cost and any sales tax paid in the process of establishing such first-**
35 **time service or new institutional acute care service shall be excluded from**

36 **total project cost;**

37 **(7) "Develop", to undertake those activities which on their completion**
38 **will result in the offering of a new institutional acute care service or a first-**
39 **time service, or the incurring of a financial obligation in relation to the**
40 **offering of such a service;**

41 **(8) "Expedited projects", those projects in which:**

42 **(a) The person seeking review certification is operating an acute care**
43 **facility and proposes to develop a new institutional acute care service or**
44 **first-time service for such facility if the proposed new institutional acute care**
45 **service or first-time service is a service already being offered in an acute care**
46 **facility in a contiguous state that does not have certificate of need laws that**
47 **regulate the service already being offered by the acute care facility in the**
48 **contiguous state; and**

49 **(b) The acute care facility proposing the new institutional acute care**
50 **service or first-time service is located in a metropolitan statistical area**
51 **within one hundred miles of the contiguous state in which the acute care**
52 **facility in which the proposed service already being offered is located;**

53 **(9) "Filed" or "filing", delivery to the staff of the committee the**
54 **document or documents an applicant believes constitutes an application and**
55 **the appropriate application fee;**

56 **(10) "First-time services", includes the following that are proposed in**
57 **a specific location or for a mobile unit regardless of cost:**

58 **(a) Magnetic resonance imaging (MRI), positron emission tomography**
59 **(PET), and linear acceleration (radiation therapy);**

60 **(b) Open-heart surgery;**

61 **(c) Cardiac catheterization labs;**

62 **(d) Lithotripsy units;**

63 **(e) Gamma knife;**

64 **(f) Ambulatory surgery operating room, including but not limited to**
65 **gastrointestinal laboratories and endoscopy laboratories and any other acute**
66 **care facilities where anesthesia and sedation occur;**

67 **(g) Computed tomography technology; or**

68 **(h) Other emerging medical equipment and related facilities that when**
69 **their functionally related components are taken together, the cost exceeds**
70 **three million dollars;**

71 **(11) "Maximum permissible distance":**

72 **(a) For an acute care facility located within a metropolitan statistical**

73 area, within one mile of the acute care facility's boundary wholly measured
74 within the same county where the existing acute care facility is located;

75 (b) For an acute care facility located outside a metropolitan statistical
76 area, within five miles of the acute care facility's boundary wholly measured
77 within the same county where the existing acute care facility is located;

78 (12) "Metropolitan statistical area", as defined by the United States
79 Office of Management and Budget according to standards published in the
80 federal register on March 30, 1990, and as subsequently revised and applied
81 to census bureau data;

82 (13) "New institutional acute care service":

83 (a) The development of a new acute care facility without regard to
84 financing methodologies;

85 (b) The acquisition or development, without regard to financing
86 methodologies, of any first-time service;

87 (c) Any change in a licensed bed capacity of an acute care service
88 facility that increases the total number of beds by more than ten beds or more
89 than ten percent of total bed capacity, whichever is less, over a two-year
90 period;

91 (d) A reallocation by an existing hospital of more than fifty licensed
92 beds or more than fifty percent of total licensed bed capacity of the receiving
93 hospital, whichever is less over the lifetime of the license, between two
94 substantially similar hospitals that are related parties or commonly
95 controlled. The total licensed bed capacity of the receiving hospital shall be
96 calculated as of August 28, 2002, or for a hospital licensed after August 28,
97 2002, the initial date of licensure;

98 (e) Renovation of an acute care facility in a current location whose cost
99 is over twenty million dollars;

100 (14) "Nonsubstantive projects", projects that are due to an act of God and
101 do not involve the addition, replacement, modernization, or conversion of
102 beds or the provision of a new institutional acute care service or first-time
103 service, but whose costs would otherwise be reviewable;

104 (15) "Notification projects":

105 (a) Emerging medical equipment and related facilities that when their
106 functionally related components are taken together the cost is less than three
107 million dollars;

108 (b) A reallocation by an existing hospital of fifty or fewer licensed beds
109 or fifty percent or less of total licensed bed capacity of the receiving hospital,

110 **whichever is less over the lifetime of the license, between two substantially**
111 **similar hospitals that are related parties or are commonly controlled;**

112 **(c) Renovation of an acute care facility in a current location whose cost**
113 **is less than twenty million dollars; except that, if the renovation is less than**
114 **three million dollars, no notification is required;**

115 **(d) Nonsubstantive projects;**

116 **(e) Projects pursuant to subsection 1 or 2 of section 197.387;**

117 **(f) Any project pursuant to section 197.390;**

118 **(16) "Person", any individual, trust, estate, partnership, corporation,**
119 **including associations and joint stock companies, state or political**
120 **subdivision or instrumentality thereof, including a municipal corporation;**

121 **(17) "Related parties", those acute care facilities, regardless of**
122 **incorporation, which are controlled by, under the control of, or commonly**
123 **controlled with the acute care facility transferring the licensed beds and the**
124 **acute care facility receiving the beds;**

125 **(18) "Review certification", a written certificate issued by the**
126 **committee setting forth the committee's affirmative finding that a proposed**
127 **project described in sections 197.375 to 197.397 sufficiently satisfies the**
128 **criteria prescribed for such projects by sections 197.375 to 197.397.**

197.378. The health facilities review committee for projects described
2 **in sections 197.375 to 197.397 shall:**

3 **(1) Review and approve or disapprove all applications for a review**
4 **certification made pursuant to sections 197.375 to 197.397. The committee**
5 **shall issue reasonable rules governing the submission, review, and disposition**
6 **of applications;**

7 **(2) Notify the applicant within fifteen days of the date of filing of an**
8 **application as to the completeness of such application as defined by rule;**

9 **(3) Provide written notification to affected persons located within this**
10 **state at the beginning of a review. The notification may be given through**
11 **publication of the review schedule in all newspapers of general circulation**
12 **in the area to be served;**

13 **(4) Hold public hearings on all applications when a request in writing**
14 **is filed by any affected person within thirty days from the date of publication**
15 **of the notification of review;**

16 **(5) Within one hundred days of the filing of any application, issue in**
17 **writing its findings of fact, conclusions of law, and its approval or denial of**
18 **the review certification; provided that the committee may grant an extension**

19 of not more than thirty days on its own initiative or upon the written request
20 of any affected person. For any expedited project, the health facilities review
21 committee shall, within forty-five days of the filing of any application for an
22 expedited project, issue in writing its findings of fact, conclusions of law, and
23 its approval or denial of the review certification; provided that the committee
24 may grant an extension of not more than twenty days on its own initiative or
25 upon the written request of any affected person;

26 (6) Send to the applicant a copy of the aforesaid findings, conclusions,
27 and decisions. Copies shall be available to any person upon request;

28 (7) Consider the needs and circumstances of institutions providing
29 training programs for health personnel;

30 (8) Consider the predominant ethnic, cultural, or religious
31 compositions of the residents to be served by an acute care facility in
32 considering whether to grant a review certification;

33 (9) Provide for the availability, based on demonstration of need, of both
34 medical and osteopathic facilities and services to protect the freedom of
35 patient choice; and

36 (10) Failure by the committee to issue a written decision on an
37 application for review certification within the time required by this section
38 shall constitute approval of and the final administrative action on the
39 application and shall be subject to appeal pursuant to section 197.387 only on
40 the question of approval by operation of law.

197.381. 1. Any person who proposes to develop or offer a new
2 institutional acute care service or a first-time service shall submit a letter of
3 intent to the committee at least thirty days prior to the filing of the
4 application unless:

5 (1) The new institutional acute care service or the first-time service
6 will have an expenditure of less than one million five hundred thousand
7 dollars for capital expenditures excluding major medical equipment and one
8 million five hundred thousand dollars for major medical equipment;

9 (2) The new institutional acute care service:

10 (a) Will wholly replace, within a defined and reasonable time period,
11 an existing acute care facility owned or operated by the person who would be
12 required to submit a letter of intent;

13 (b) Is constructed on property within the maximum permissible
14 distance from such existing acute care facility's boundary; and

15 (c) The license of the existing acute care facility will be terminated or

16 transferred to the new acute care facility and the new acute care facility will
17 be licensed upon approval by the department of health and senior services;

18 (3) The first-time service for which the person would otherwise be
19 required to submit a letter of intent is the acquisition, development, or
20 construction of a piece of equipment that:

21 (a) Is a replacement piece of equipment or an additional piece of
22 equipment substantially similar to a piece of equipment for which a
23 certificate of need or a review certificate has already been issued and is
24 currently owned or operated by such person; and

25 (b) Will be placed in the same licensed location or licensed facility as
26 the previously certified piece of equipment.

27 2. An application fee shall accompany each application for a review
28 certification. The time of filing commences with the receipt of the application
29 and the fee. The fee shall be one thousand dollars or one-tenth of one percent
30 of the total project, whichever is greater. All application fees shall be
31 deposited in the state treasury. The general assembly will appropriate funds
32 to the department of health and senior services for expenditures related to
33 the operation of the health facilities review committee.

197.384. 1. For the purpose of submitting an application for review
2 certification, any person who proposes to develop or offer a new institutional
3 acute care service shall obtain a review certification from the committee
4 prior to the time such services are offered unless the new institutional acute
5 care service:

6 (1) Will wholly replace, within a defined and reasonable time period,
7 an existing acute care facility owned or operated by the person who would be
8 required to submit a letter of intent;

9 (2) Is constructed on property within the maximum permissible
10 distance from such existing acute care facility's boundary; and

11 (3) The license of the existing acute care facility will be terminated or
12 transferred to the new acute care facility and the new acute care facility will
13 be licensed upon approval by the department of health and senior services.

14 2. Any person who proposes to develop or offer a first-time service
15 shall obtain a review certification from the committee prior to the time such
16 services are offered unless the first-time service for which the person would
17 otherwise be required to submit a letter of intent is the acquisition,
18 development, or construction of a piece of equipment that:

19 (1) Is a replacement piece of equipment or an additional piece of

20 equipment substantially similar to a piece of equipment for which a
21 certificate of need or a review certificate has already been issued and is
22 currently owned or operated by such person; and

23 (2) Will be placed in the same licensed location or licensed facility as
24 the previously certified piece of equipment.

25 Any person who proposes to replace a facility described in subdivision (1), (2),
26 or (3) of subsection 1 of this section shall, no later than sixty days
27 immediately prior to the date of the initiation of the construction process to
28 begin replacement, conduct a public hearing regarding the project. Notice of
29 hearing shall be given by publication in major newspapers of general
30 circulation in the area to be served for four consecutive weeks prior to the
31 hearing date. The Missouri facilities review committee shall notify all
32 licensed acute care facilities within the service area in which the proposed
33 new institutional acute care service is to be developed not less than thirty
34 days prior to the hearing date.

35 3. Any person who proposes to add new, not previously licensed, beds
36 to an existing hospital shall obtain a review certification, but shall not
37 preclude the addition or transfer of beds without review certification as
38 defined in paragraphs (c) and (d) of subdivision (13) of section 197.375.

39 4. Any person who proposes to renovate an acute care facility in a
40 current location whose cost is over twenty million dollars shall obtain a
41 review certification.

42 5. Only those new institution acute care services or first-time services
43 that are found by the committee to meet the health needs of the community
44 served shall be granted a review certification.

45 6. A review certification shall be issued only for the premises and
46 persons named in the application and is not transferable except by the
47 consent of the committee.

48 7. Project cost increases, exceeding the initial estimate by more than
49 ten percent shall not be incurred without consent of the committee.

50 8. Periodic reports to the committee shall be required of any applicant
51 who has been granted a review certification until the project has been
52 completed. The committee may order the forfeiture of the review
53 certification upon failure of the applicant to file any such report.

54 9. A review certification shall be subject to forfeiture for failure to
55 incur capital expenditures within twelve months after the date of the
56 order. The applicant may request two extensions from the committee to avoid

57 forfeiture. In any case, regardless of any extensions that may be granted, if
58 after one year no capital expenditure has been made, the total statewide
59 count of the services in question shall not reflect the units undeveloped.

60 **10. No state agency charged by statute to license or certify acute care**
61 **facilities shall issue a license to or certify any such facility, or distinct part**
62 **of such facility, that is developed and is required to have a review**
63 **certification, without first obtaining a review certification.**

64 **11. No state agency shall appropriate or grant funds to or make**
65 **payment of any funds to any person or acute care facility that has not first**
66 **obtained every review certification required pursuant to sections 197.375 to**
67 **197.397.**

68 **12. If any person proposes to develop any new institutional health care**
69 **service without a review certification as required by sections 197.375 to**
70 **197.397, the committee shall notify the attorney general and the attorney**
71 **general shall seek an injunction or apply for other appropriate legal action**
72 **in any court of this state against such person.**

73 **13. In no event shall a review certification be denied because the**
74 **applicant refuses to provide abortion services or information.**

75 **14. A review certification shall not be required for the transfer of**
76 **ownership of an existing and operational acute care facility in its entirety or**
77 **for the conversion by a hospital of mobile first-time service to a first-time**
78 **service in a permanent fixed location if the hospital previously received a**
79 **certificate of need or review certificate for the mobile first-time service.**

80 **15. A review certification may be granted for something less than that**
81 **which was sought in the original application.**

82 **16. To assure the safe, appropriate, and cost-effective transfer of new**
83 **medical technology throughout the state, a review certification shall not be**
84 **required for the purchase and operation of research equipment that is to be**
85 **used in a clinical trial that has received written approval from a duly**
86 **constituted institutional review board of an accredited school of medicine or**
87 **osteopathy located in Missouri to establish its safety and efficiency and does**
88 **not increase the bed complement of the institution in which the equipment**
89 **is to be located. After the clinical trial has been completed, a review**
90 **certification must be obtained for continued use in such facility.**

91 **17. The provisions of section 197.326 shall apply to projects described**
92 **in sections 197.375 to 197.397.**

197.387. Within thirty days of the decision of the committee, the

2 applicant may file an appeal pursuant to chapter 621, RSMo. Any subsequent
3 appeal venue shall be the circuit court in the county within which such new
4 institutional acute care service or first-time service is proposed to be
5 developed, or the Cole County circuit court, at the applicant's discretion.

197.390. Review certification is not required for:

2 (1) Acute care facilities operated by the state. Appropriation of funds
3 to such facilities by the general assembly shall be in compliance and such
4 facilities shall be deemed to have received an appropriate review certification
5 without any fee or charge;

6 (2) Notification projects pursuant to subdivision (16) of section 197.375
7 or nonsubstantive projects pursuant to subdivision (15) of section 197.375;
8 except that, any person who wishes to pursue a notification project shall
9 notify the committee in writing advising the committee of the nature of the
10 project, the statutory authorization for classification as a notification project,
11 and submit a verified statement of facts in support of such classification.

197.393. For the purposes of reimbursement pursuant to section
2 **208.152, RSMo, project costs for new institutional acute care services in**
3 **excess of ten percent of the initial project estimate unless approval was**
4 **obtained pursuant to subsection 8 of section 197.384 shall not be eligible for**
5 **reimbursement for the first three years that a facility receives payment for**
6 **services provided pursuant to section 208.152, RSMo. The initial estimate**
7 **shall be that amount for which the original review certificate was**
8 **obtained. Reimbursement for these excess costs after the first three years**
9 **shall not be made until a review certification has been granted for the excess**
10 **project costs. The provisions of this section shall apply only to facilities**
11 **which file an application for a review certification or make application for**
12 **cost-overrun review of their original application or waiver.**

197.396. No hospital or other health care facility within an area of one
2 **half mile of any political subdivision shall expand its gross building area or**
3 **floor area ratio beyond that which is constructed and existing as of January**
4 **1, 2002, nor modify its comprehensive plan, master plan, site plan, site**
5 **development plan or concept plan except with the approval of such political**
6 **subdivision as evidenced by a duly enacted resolution adopted by the**
7 **governing body of such political subdivision.**

197.397. The committee shall have the power to promulgate reasonable
2 **rules, regulations, criteria, and standards in conformity with this section and**
3 **chapter 536, RSMo, to meet the objectives of sections 197.300 to 197.397**

4 including the power to establish criteria and standards to review new types
5 of equipment or service. Any rule or portion of a rule, as that term is defined
6 in section 536.010, RSMo, that is created under the authority delegated in
7 sections 197.300 to 197.397 shall become effective only if it complies with and
8 is subject to all of the provisions of chapter 536, RSMo, and, if applicable,
9 section 536.028, RSMo. All rulemaking authority delegated prior to August 28,
10 2002, is of no force and effect and repealed. Nothing in this section shall be
11 interpreted to repeal or affect the validity of any rule filed or adopted prior
12 to August 28, 2002, if it fully complied with all applicable provisions of the
13 law. This section and chapter 536, RSMo, are nonseverable and if any of the
14 powers vested with the general assembly pursuant to chapter 536, RSMo, to
15 review, to delay the effective date or to disapprove and annul a rule are
16 subsequently held unconstitutional, then the grant of rulemaking authority
17 and any rule proposed or adopted after August 28, 2002, shall be invalid and
18 void.

430.225. 1. As used in sections 430.225 to 430.250, the following terms
2 shall mean:

- 3 (1) "Claim", a claim of a patient for:
 - 4 (a) Damages from a tort-feasor; or
 - 5 (b) Benefits from an insurance carrier;
- 6 (2) "Clinic", a group practice of health practitioners or a sole practice
7 of a health practitioner who has incorporated his or her practice;
- 8 (3) "Health practitioner", a chiropractor licensed pursuant to chapter
9 331, RSMo, a podiatrist licensed pursuant to chapter 330, RSMo, a dentist
10 licensed pursuant to chapter 332, RSMo, a physician or surgeon licensed
11 pursuant to chapter 334, RSMo, or an optometrist licensed pursuant to
12 chapter 336, RSMo, while acting within the scope of their practice;
- 13 (4) "Insurance carrier", any person, firm, corporation, association or
14 aggregation of persons conducting an insurance business pursuant to chapter
15 375, 376, 377, 378, 379, 380, 381 or 383, RSMo;
- 16 (5) "Other institution", a legal entity existing pursuant to the laws of
17 this state which delivers treatment, care or maintenance to patients who are
18 sick or injured;
- 19 (6) "Patient", any person to whom a health practitioner, hospital, clinic
20 or other institution delivers treatment, care or maintenance for sickness or
21 injury caused by a tort-feasor from whom such person seeks damages or any
22 insurance carrier which has insured such tort-feasor.

23 **2. Clinics, health practitioners and other institutions, as defined in this**
24 **section shall have the same rights granted to hospitals in sections 430.230 to**
25 **430.250.**

26 **3. If the liens of such health practitioners, hospitals, clinics or other**
27 **institutions exceed fifty percent of the amount due the patient, every health**
28 **care practitioner, hospital, clinic or other institution giving notice of its lien,**
29 **as aforesaid, shall share in up to fifty percent of the net proceeds due the**
30 **patient, in the proportion that each claim bears to the total amount of all**
31 **other liens of health care practitioners, hospitals, clinics or other**
32 **institutions. "Net proceeds", as used in this section, means the amount**
33 **remaining after the payment of contractual attorney fees, if any, and other**
34 **expenses of recovery.**

35 **4. In administering the lien of the health care provider, the insurance**
36 **carrier may pay the amount due secured by the lien of the health care**
37 **provider directly, if the claimant authorizes it and does not challenge the**
38 **amount of the customary charges or that the treatment provided was for**
39 **injuries caused by the tort-feasor.**

40 **5. Any health care provider electing to receive benefits hereunder**
41 **releases the claimant from further liability on the cost of the services and**
42 **treatment provided to that point in time.**

 [197.311. No member of the Missouri health facilities review
2 committee may accept a political donation from any applicant for a
3 license.]

 [197.366. The provisions of subdivision (8) of section 197.305 to the
2 contrary notwithstanding, after December 31, 2001, the term "health care
3 facilities" in sections 197.300 to 197.366 shall mean:

- 4 (1) Facilities licensed under chapter 198, RSMo;
5 (2) Long-term care beds in a hospital as described in subdivision
6 (3) of subsection 1 of section 198.012, RSMo;
7 (3) Long-term care hospitals or beds in a long-term care hospital
8 meeting the requirements described in 42 CFR, section 412.23(e); and
9 (4) Construction of a new hospital as defined in chapter 197.]

 [430.225. 1. As used in sections 430.225 to 430.250, the following
2 terms shall mean:

- 3 (1) "Claim", a claim of a patient for:
4 (a) Damages from a tort-feasor; or

5 (b) Benefits from an insurance carrier;

6 (2) "Clinic", a group practice of health practitioners or a sole
7 practice of a health practitioner who has incorporated his or her practice;

8 (3) "Health practitioner", a chiropractor licensed pursuant to
9 chapter 331, RSMo, a podiatrist licensed pursuant to chapter 330, RSMo,
10 a dentist licensed pursuant to chapter 332, RSMo, a physician or surgeon
11 licensed pursuant to chapter 334, RSMo, or an optometrist licensed
12 pursuant to chapter 336, RSMo, while acting within the scope of their
13 practice;

14 (4) "Insurance carrier", any person, firm, corporation, association
15 or aggregation of persons conducting an insurance business pursuant to
16 chapter 375, 376, 377, 378, 379, 380, 381 or 383, RSMo;

17 (5) "Other institution", a legal entity existing pursuant to the laws
18 of this state which delivers treatment, care or maintenance to patients
19 who are sick or injured;

20 (6) "Patient", any person to whom a health practitioner, hospital,
21 clinic or other institution delivers treatment, care or maintenance for
22 sickness or injury caused by a tort-feasor from whom such person seeks
23 damages or any insurance carrier which has insured such tort-feasor.

24 2. Clinics, health practitioners and other institutions, as defined
25 in this section shall have the same rights granted to hospitals in sections
26 430.230 to 430.250.

27 3. If the liens of such health practitioners, hospitals, clinics or
28 other institutions exceed fifty percent of the amount due the patient, every
29 health care practitioner, hospital, clinic or other institution giving notice
30 of its lien, as aforesaid, shall share in up to fifty percent of the net
31 proceeds due the patient, in the proportion that each claim bears to the
32 total amount of all other liens of health care practitioners, hospitals,
33 clinics or other institutions. "Net proceeds", as used in this section, means
34 the amount remaining after the payment of contractual attorney fees, if
35 any, and other expenses of recovery.

36 4. In administering the lien of the health care provider, the
37 insurance carrier may pay the amount due secured by the lien of the
38 health care provider directly, if the claimant authorizes it and does not
39 challenge the amount of the customary charges or that the treatment
40 provided was for injuries cause by the tort-feasor.

41 5. Any health care provider electing to receive benefits hereunder
42 releases the claimant from further liability on the cost of the services and
43 treatment provided to that point in time.]
2 Section B. The provisions of this act shall become effective December 31, 2002.

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